IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2018

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

Civil Suit No.588 of 2015

M/s.Sun TV Network Ltd.,
Rep. By its Authorised Signatory,
Mr.M.Jyothi Basu,
Murasoli Maran Towers,
73 MRC Nagar Main Road,
MRC Nagar, Chennai 28. ... Plaintiff

Vs

M/s.K.S.Talkies,
Rep. By its Proprietor,
Mr.Kalliyoor Sasi,
T.C.41/1741, Kadiapattanam Lane,
Manacaud,
Thiruvananthapuram 695 009. ...Defendant

This Civil Suit is preferred under Order VII Rule 1 of the Code of Civil Procedure and order IV Rule 1 of the Rules of the Madras Original Side, 1956 for a decree and judgment against the defendant in favour of the plaintiff for

(a)recovery of a sum of Rs.1,10,57,000/- (Rupees One Crore Ten Lakhs Fifty Seven Thousand Only) [the sum being the advance paid (Rs.33,75,000/-) paid on 11.02.2012 and treated to be paid on 22.11.2013, along with interest at the rate of 24% from 22.11.2013 to 23.02.2015 which is Rs.20,92,500/-. The 2nd & 3rd installment amount of Rs.26,10,000/- & 13,05,000/- respectively along with interest at the rate of 24% from 27.11.2013 to 23.02.2015 which is Rs.7,83,000/- and Rs.3,91,500/- and in total the plaintiff is entitled for Rs.1,05,57,000/-, the liquidated damages the sum of Rs.5,00,000/-] as against the defendant with future interest at 24% per annum from date of filing of the suit and till date of realization for principal amount.

b) to pay cost and

c)pass any further similar other orders as this Honourable Court may deem fit and proper in the circumstances of the case and thus render justice.

For Plaintiff : Ms.P.Manisha

For Defendant : Set Exparte

JUDGMENT

There is a sole plaintiff and a lone defendant in this suit. Jurisdiction of this Commercial Division qua this suit was determined in earlier proceedings of this Commercial Division dated 11.04.2018 and there was an elaboration of the same in another earlier proceedings of this Commercial Division dated 16.08.2018.

2.Suffice to say that this suit pertains to copyright in two Malayalam feature films and therefore, under Sub Section 2 of Section 62 of Copyright Act, 1957 ('said Act' for brevity), this Commercial Division has jurisdiction to entertain this suit under first proviso to Section 7 of the Commercial Courts Act, 2015.

3.The suit was presented in this Court on 10.06.2015 and it was admitted on 21.07.2015. Suit summons for the sole defendant was duly served on 08.09.2015.

4.The sole defendant after being duly served with suit summons, neither appeared through counsel nor appeared before this Commercial Division, in person.

5.To be noted, the sole defendant, is a sole proprietary concern. In other words, one Mr.Kalliyoor Sasi is carrying on business as sole proprietor in the name and style K.S.Talkies and this much about the constitution of the sole defendant.
6.With regard to the factual matrix in the main suit, it is the case of the plaintiff that it had entered into two separate agreements with the sole defendant for assignment of copyright in two Malayalam feature films, advanced monies for such assignment, but, the movies ultimately, did not hit the silver screen and the plaintiff did not get the rights for which it signed up. Saying so, after a pre-suit notice, the instant suit has been filed by the plaintiff for recovery of monies paid for assignment of copyright in two Malayalam feature films, liquidated damages of Rs.5,00,000/- and future interest.

7.The two Malayalam feature films which form subject matter of the instant suit or in other words, the central theme of the instant suit as alluded to supra is constituted by two Malayalam feature films with titles 'Anthivelicham' (hereinafter referred to as 'suit movie 1') and 'Maram Peyyumbol' (hereinafter referred to as 'suit movie 2') for the sake of convenience and clarity.

8.It is the case of the plaintiff that agreements entered into with the defendant were for assignment of exclusive copyright in suit movies 1 and 2, in respect of satellite television broadcasting, direct to home broadcast, direct satellite service, terrestrial television broadcast and all other rights connected therewith including exhibition of the said film by means of wireless diffusion and by wire for communication and other means of communication to the public through television broadcast for the entire world, (these rights shall hereinafter referred to as the said rights for the sake of convenience and clarity).

9.The plaintiff entered into an agreement dated 12.09.2012 styled/captioned 'assignment right' with regard to suit movie 1. This assignment agreement has been marked as Ex.P.2. The details of suit movie 1 as contained in the schedule of Ex.P.2 reads as follows:

SCHEDULE

Title of the film : ANTHIVELICHAM
(Malayalam Colour)

Starring : Mukesh, Thilakan, Kailash, Baburaj,

Suraj Venjaramood, Tiny Tom, Indrans,
Ananya, Lakshmi Gopalaswamy, Maya
Venugopal & ohters

Music : M.Jayachandran

Direction : Harikumar

Telacast Commencing Date : 25.06.2013

Period : Perpetual Period from the date of this
agreement."

10.Total consideration for said rights in suit movie 1 is Rs.1,25,00,000/-, in all. Plaintiff paid a sum of Rs.33,75,000/- as advance and part payment on 11.02.2012 vide Ex.P.3. Thereafter, it unfurls from the plaint averments that a leading character in suit movie 1 (Mr.Thilakan) died suddenly and therefore, the production of suit movie 1 was dropped.

11.Under such circumstances, it is plaintiff's case that another assignment agreement was entered into with the defendant for suit movie 2. This agreement is also styled/captioned 'assignment agreement' and the same is dated 22.11.2013. This assignment agreement for suit movie 2 has been marked as Ex.P.4. Detailing qua suit movie 2 as described in the schedule of Ex.P.4 reads as follows:

"SCHEDULE

Title of the film : "MARAM PEYYUMBOL"
(Malayalam Colour)

Starring : Mukesh, Vineeth, Kailash, Nandu,
Tiny Tom, Anumol, Meera Nandan,
Mythili, Mallika, Ambika & others
Venugopal & ohters

Music : Jerry Amaldev

Direction : Anil V Thomas

Telacast Commencing Date : 21.05.2014

Period : Perpetual Period from the date of this
agreement."

12.Total consideration for the said rights in the suit movie 2 is Rs.1,10,00,000/- and the aforesaid Rs.37,50,000/- already paid towards advance part payment with regard to suit movie 1 under Ex.P.2 shall be treated as part payment and advance made for suit movie 2, is the agreement.

13.To be noted, it has also been mentioned in Ex.P.4 that tentative date of release of suit movie 2 is 21.01.2014 and if there is delay of more than 90 days from the tentative date of release, plaintiff can exercise their option to cancel the agreement. Besides being entitled to liquidated damages of Rs.5,00,000/- and refund of monies paid with interest @ 24% per annum, it is adumbrated in clause 20 of Ex.P.4 that the same are without prejudice to other rights of plaintiff and the same reads as follows:

"20.In case of delay in the release of the film for a period more than 90 days from the tentative date of release, i.e., 21.01.2014, the "ASSIGNEE" may exercise their option to cancel this agreement. In case of such option being exercised by the "ASSIGNEE", the "ASSIGNOR" undertakes to repay all advances paid by the "ASSIGNEE" along with the interest at the rate of 24% per annum from the date of payment and shall further pay liquidated damages of Rs.5,00,000/-. It is agreed between the parties hereto that the above shall be without prejudice to the rights of the "ASSIGNEE" to compel performance through the court of law."

14.It is the case of the plaintiff that further payments were made under Ex.P.4 on 27.11.2013. Such further payments according to the plaintiff are in sums of Rs.26,10,000/- and Rs.13,05,000/- vide Exs.P.5 and P.6. Monies paid under Exs.P.4 to P.6 add upto Rs.72,90,000/-. It is asserted by learned counsel for the plaintiff that the aforesaid sums of monies paid under Exs.P.4 to P.6 were duly encashed by the sole defendant.

15.Though the sole defendant has encashed the aforesaid monies, suit movie 2 also was not released on the tentative date and the release was being delayed endlessly. Therefore, the plaintiff invoked the aforesaid clause No.20 of Ex.P.4, terminated Ex.P.4 and demanded refund of the monies paid. This is evident from a notice through lawyer dated 10.09.2014 which has been marked as Ex.P.7. To be noted, Ex.P.7 includes the postal acknowledgment card which shows that Ex.P.7 has been duly served on the sole defendant on 16.09.2014.

16.The sole defendant sent a reply dated 20.09.2014 and the same has been marked as Ex.P.8. Important aspects of the reply are that the sole defendant admitted execution of Ex.P.4 and admitted receipt of monies, the details of which have been set out supra. However, the sole defendant stated that his financial status is not very healthy and that the delay in release of suit movie 2 is neither wanton nor willful, but only owing to circumstances beyond the control of the defendant.

17.Under the aforesaid circumstances, as mentioned supra, the instant suit was filed in this Court on 10.06.2015 claiming the aforesaid sums of monies paid under Ex.P.4, liquidated damages of Rs.5,00,000/- and future interest. As mentioned supra, after being duly served with suit summons, the sole defendant neither appeared through his counsel nor has he come before this Court in person. Therefore, the sole defendant was set exparte. The suit was posted for recording exparte evidence before the Additional Master II.

18.One Mr.M.Jyothibasu, working with the plaintiff company was examined as P.W.1 on 27.08.2018 and the aforesaid exhibits i.e., P.1 to P.8 were marked through him.

19.To be noted, about Exs.P.2 to P.8, they have already been alluded to supra. As far as Ex.P.1 is concerned, the same is an extract of Board Resolution of the plaintiff company authorising Mr.M.Jyothibasu, Company Secretary to depose. As mentioned supra, the aforesaid individual deposed as P.W.1.

20.I have perused the plaint as well as the deposition of P.W.1. The deposition of P.W.1 is cogent and it is in harmony with the plaint pleadings. In other words, the deposition is synchronized with the pleadings which supports the plaint pleadings.

21.After recording of exparte evidence in the aforesaid manner, before the Additional Master II, the suit has been placed before me i.e., this Commercial Division today "for arguments".

22.Today, I heard Ms.P.Manisha, learned counsel on record for the plaintiff.

23.Learned counsel for the plaintiff took me through the plaint averments, Exs.P.1 to P.8 and the deposition of P.W.1. The prayer paragraph in the plaint is paragraph No.15 and the same reads as follows:

(a)For recovery of a sum of Rs.1,10,57,000/- (Rupees One Crore Ten Lakhs Fifty Seven Thousand Only) [the sum being the advance paid (Rs.33,75,000/-) paid on 11.02.2012 and treated to be paid on 22.11.2013, along with interest at the rate of 24% from 22.11.2013 to 23.02.2015 which is Rs.20,92,500/-. The 2nd & 3rd installment amount of Rs.26,10,000/- & 13,05,000/- respectively along with interest at the rate of 24% from 27.11.2013 to 23.02.2015 which is Rs.7,83,000/- and Rs.3,91,500/- and in total the plaintiff is entitled for Rs.1,05,57,000/-, the liquidated damages the sum of Rs.5,00,000/-] as against the defendant with future interest at 24% per annum from date of filing of the suit and till date of realization for principal amount.

b) to pay cost and
c)pass any further similar other orders as this Honourable Court may deem fit and proper in the circumstances of the case and thus render justice.

24.On perusal of paragraph No.15 of the plaint extracted and reproduced supra reveals that there are three limbs which constitute the plaint prayer. As far as the first limb is concerned, from the averments discussed above and the narrative of this suit supra, the plaintiff will be entitled to refund of aforesaid sum of Rs.72,90,000/- paid under Exs.P.4 to P.6 with interest and that adds upto Rs.1,05,57,000/- is learned counsel for plaintiff's says.
25.To be noted, it is Rs.72,90,000/- together with interest @ 24% per annum from the respective dates on which the three payments (three payments constitute to Rs.72,90,000/-) were made to the date of plaint. Rs.5,00,000/- is towards liquidated damages which has been alluded to supra and the same has been adumbrated in clause 20 of Ex.P.4 which has also been extracted and reproduced supra.

26.A further close perusal of limb 'a' of the prayer paragraph in the plaint will reveal that the plaintiff claims future interest @ 24% per annum and a plain reading of sub para 'a' of paragraph No.15 of the plaint reveals that interest @ 24% per annum is claimed on Rs.1,05,57,000/-. The plaintiff will be entitled to interest only on the aforesaid principal sum of Rs.72,90,000/-. The plaintiff will not be entitled to future interest on the interest component on the principal as well as Rs.5,00,000/- liquidated damages. In other words, the plaintiff will be entitled to Rs.1,05,57,000/- together with interest @ 24% per annum from the date of plaint on Rs.72,90,000/-.

27.In the light of Section 34 of the Code of Civil Procedure 1908, for the purpose of ascertaining whether the plaintiff is actually entitled to interest @ 24% per annum, I examined Ex.P.4. Learned counsel for the plaintiff drew my attention to Clause 20 of Ex.P.4. Clause 20 of Ex.P.4 (extracted supra) and submitted that there is a contract between plaintiff and defendant, which entitles plaintiff for interest @ 24% per annum in the event of plaintiff terminating Ex.P.4 and asking for refund of the monies paid to the defendant. To be noted, a similar clause is found in Ex.P.2 also and that clause is also clause No.20.

28.In the light of the assertion of learned counsel for the plaintiff, the monies paid to defendant under Exs.P.4 to P.6 which have been encashed coupled with the stated position of the sole defendant vide reply notice marked as Ex.P.8 that he has received monies under Ex.P.4 as alluded supra, it is clear that the plaintiff has proved it's claim. However, with regard to future interest, the details of the same have already been alluded to and elaborated supra.

29.Second limb of the prayer is with regard to costs. The narrative supra would reveal that the defendant had the benefit of monies from the respective dates on which it was paid i.e., one payment on 11.10.2012 and two payments on 27.12.2013. Furthermore, the defendant has not disputed Ex.P.4. The defendant has categorically admitted Ex.P.4 assignment agreement vide Ex.P.8 - reply notice. The defendant has also not disputed the transactions, in any other manner. However, the defendant has not chosen to come before this Court either in person or through a counsel despite being duly served with suit summons. This has necessitated the plaintiff to carry this matter to its logical end for over a period of three years expending time, money and energy. Therefore, this is a fit case to award costs. To my mind, it appears to be a fit case for awarding compensatory cost under Section 35-A of the Code of Civil Procedure, 1908' ('CPC' for brevity). However, I refrain from doing so at the moment in the light of the averment in Ex.P.8 that the defendant is not in good financial status. Be that as it may, if the defendant chooses to re-open this suit, award of compensatory cost under Section 35-A of C.P.C., will also become open and this decree will not come in the way if defendant chooses to reopen this lis-inter-alia by seeking to set aside this exparte decree.

30.With regard to third limb of the prayer i.e., sub paragraph No.3 of paragraph 15, I have already created a window with regard to compensatory costs under Section 35-A of C.P.C. To be noted, Section 35-A of C.P.C., as amended by the said Act has no cap qua quantum and relief can be granted as in sub paragraph 'c' of paragraph No.15 of the plaint, if defendant chooses to reopen the suit.

Suit is decreed with costs in the aforesaid manner.

20.09.2018

jbm

Index: Yes/No

Speaking order/non speaking order

M.SUNDAR.J

jbm

20.09.2018